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District Attorney

Report of the Law Enforcement Involved Fatal Incident of Patrick Watkins on May 20th, 2021

Table of Contents

Privacy Statement.....	3
Executive Summary.....	4
Introduction.....	5
Investigation.....	7
Overview.....	7
Evidence Reviewed.....	9
Timeline.....	10
Scene Description.....	11
Relevant Body Worn Camera.....	16
Interviews of Involved Police Officers.....	17
Interviews of Civilian Witnesses.....	20
Interviews of Medical Emergency Personnel.....	23
Additional Investigation.....	23
Re-Interview with W-1 and Interview of W-5 re: Next-of-Kin Death Notification.....	23
Crime Scene Evidence Recovered.....	24
Autopsy.....	24
Legal Principles	25
Legal Analysis.....	31
Conclusion.....	37

Privacy Statement

This report includes redactions of the names and other identifying information of victims, witnesses, and family members. Specific addresses are also not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as the readability of this report, the victims and witnesses will be indexed as follows:

- Witness 1 (W-1), Former girlfriend of Patrick Watkins
- Witness 2 (W-2), Current boyfriend of W-1
- Witness 3 (W-3), Neighbor to W-1
- Witness 4 (W-4), Registered owner of firearm possessed by Patrick Watkins
- Witness 5 (W-5), Cousin of Patrick Watkins
- Witness 6 (W-6), Brother of Patrick Watkins
- Location #1, location of incident

Executive Summary

On May 20th, 2021, at approximately 9:22 p.m.¹, Pittsburg Police Department dispatch received a call from W-1, who lived in an apartment complex in the city of Pittsburg, CA [hereinafter referred to as location #1]. W-1 called 911 and stated that Patrick Watkins, the father of her child, was at her front door, armed with a firearm and was refusing to leave.

Pittsburg Police Officer John Odell responded to the scene and saw Watkins on a stairwell that led to the apartment where W-1 resided. As Officer Odell contacted Watkins, Officer Flores, Officer Simpson, and Sergeant Dumpa arrived at location #1.

Watkins, who matched the description of the person armed with a firearm, initially did not have a weapon in his hands, but reached for his side and pocket areas multiple times when contacted by police. Watkins then began to walk up the stairs and away from the police. Officers issued him multiple commands to stop, but Watkins ignored their commands and proceeded up the stairwell.

Multiple police officers followed Watkins up the stairs. Once at the second story landing, Officer Odell, who was closest to Watkins, ordered Watkins to get on the ground. Watkins, who had his back turned to the officer, then rotated his body towards Officer Odell with a semi-automatic handgun in his right hand. Watkins pointed his firearm at Officer Odell. In response, Officer Odell fired (3) three shots at Watkins.

Officer Odell then dropped to a prone position on the ground and realized his firearm was malfunctioning. Officer Simpson, who was one of the officers behind Officer Odell, saw Officer Odell go down and believed Watkins had shot and injured Officer Odell.

Officer Simpson saw Watkins pointing his firearm at him, and in response, fired two additional rounds at Watkins. Officers Simpson and Odell then retreated down the stairs to a position of safety. During the shooting, Watkins was struck multiple times and died as a result of his injuries.

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, Pittsburg Police Officers Odell and Simpson were justified in their use of lethal force. The officers acted with an actual and reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury. As such, no further action will be taken in this case.

¹ All times and distances listed in this report are approximations.

INTRODUCTION

This report is the final step in the CCCDAO investigation of the Pittsburg Police Department's officer involved shooting death of Patrick Watkins on May 20th, 2021, in Pittsburg, California.

The CCCDAO and every law enforcement agency in Contra Costa County follow the Law Enforcement Involved Fatal Incident Protocol ("the Protocol")² to investigate incidents when officers or civilians are shot, killed, or die during an encounter with law enforcement. Under the Protocol, the CCCDAO investigates all in-custody deaths in Contra Costa County for the purpose of making an independent determination of criminal liability. The sole purpose of the District Attorney investigation is to determine if there is proof beyond a reasonable doubt that an individual involved in the law enforcement involved fatality committed a crime.

Pursuant to the Protocol, immediately after an in-custody death, the involved law enforcement agency is required to notify the appropriate district attorney personnel. Once notified, trained and experienced members of the District Attorney's Office respond to the scene and begin the criminal investigation. In addition, criminal investigators from the law enforcement agency involved in the incident and from the jurisdiction where the incident occurred, if different, respond to the scene as well. It is important to note that although these investigations happen simultaneously, each agency conducts its own independent investigation.

As part of the criminal investigation, law enforcement officers and civilians who witnessed the incident may be interviewed. Evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any other relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff's Office Crime Lab responds to every incident and is responsible for evidence collection of all in-custody deaths.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may voluntarily choose to provide a statement, physical evidence, or other relevant information during the criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to give a statement as part of a law enforcement agency administrative investigation only. (See, Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300 et seq.). In accordance with the law, the CCCDAO does not participate in compelled administrative investigation interviews and does not review them as part of the independent criminal investigation. There are very narrow circumstances where an exception to this rule is allowed.

Independent of the CCCDAO and in accordance with the Protocol, the Coroner's Division of the Contra Costa County Sheriff's Office (CCCSO) conducts a Coroner's Inquest following most

² Contra Costa County was one of the first counties in the country to adopt a fatal incident protocol between the District Attorney and the law enforcement agencies within the county. The complete LEIFI protocol document can be located on the Contra Costa County District Attorney's Office website.

deaths that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County.

The Coroner's Inquest is open to the public, conducted by a hearing officer (a private attorney hired by the Coroner's Division) and is held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the inquest, the hearing officer questions witnesses, and additional evidence may be presented. After hearing all the evidence, the role of the jury is to decide whether the death was by (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e., homicide). The jury's decision has no legal bearing on the civil or criminal investigations or liability of any person(s) involved in the incident.

In the present case, the Coroner's Inquest occurred on May 27th, 2022. At the conclusion of the hearing, the jury found the death of Patrick Watkins was, "at the hands of another, other than by accident."

INVESTIGATION³

OVERVIEW:

On May 20, 2021, Chief Mulligan of the Contra Costa County District Attorney's Office was notified that Pittsburg Police Department (PPD) had invoked the protocol for an officer involved shooting (OIS) involving two of their officers.

Members of the District Attorney's Office as well as personnel from the Pittsburg Police Department responded to the scene. CCDAO Lt. Ed Sousa was the on-scene commander for this incident. Additionally, Asst. Chief Threats, and Contra Costa County Deputy District Attorneys Allison Chandler and Molly Manoukian responded to the incident.

When the CCCDAO investigative team arrived at Location #1, the crime scene was being physically guarded by PPD personnel and the entire surrounding area was marked off with crime scene tape to aid in the preservation of any physical evidence. Our team also observed the location of key items of evidence, paying particular attention to the areas where the shooting had taken place. After CCCDAO investigators reviewed the shooting scene, the CCCSO Forensics Division (Crime Lab) was notified and arrived on scene to document their findings and collect evidence. After walking through the crime scene and reviewing the associated evidence, the CCCDAO investigative team joined the PPD detectives at the Pittsburg Police Department for a briefing. A joint briefing with both agencies was held to give an overview of the incident to ensure everyone with an active role in the investigation had the relevant information.

Detective Ryan Ruff was designated as the lead investigator for PPD. A briefing of the incident indicated Officers John Odell, Hector Flores, Gregory Simpson and Sergeant Sankara Dumpa responded to a call of a man with a gun. Once the officers made contact with the subject outside of the apartment, the subject produced a handgun at which time Officers Odell and Simpson discharged their firearms at WATKINS, subsequently striking him. WATKINS fell to the ground and was ultimately pronounced deceased at the scene.

The involved officers were sequestered in separate rooms at the Hampton Inn and Suites in Pittsburg and were awaiting the arrival of their legal representatives before being interviewed.

At the conclusion of the briefing, Lt. Sousa assigned the following personnel as investigative teams with specific investigative tasks:

³ The "Investigative" section of this LEIFI report, excluding the "Autopsy" portion, is pulled from excerpts of the "LEIFI Protocol Investigation" report authored by CCCDAO Senior Inspector Tim Jung. The "Autopsy" section of this LEIFI report is pulled from excerpts of the "Contra Costa County Coroner's Report" [Report Number 2021-2918].

TEAM #1:

Sr. Insp. Tim Jung

Contra Costa District Attorney's Office

Sgt. Kyle Baker

Pittsburg Police Department

Assignment: Interviewed W-1 and W-2.

TEAM #2:

Sr. Insp. Tim Jung

Contra Costa District Attorney's Office

Det. Ernesto Mejia

Pittsburg Police Department

Assignment: Interviewed W-3

TEAM #3:

Sr. Inspector Tim Jung

Contra Costa District Attorney's Office

Det. Miguel Gutierrez

Pittsburg Police Department

Assignment: Interviewed Officers Marcus Cardona and Hector Flores

TEAM #4:

Sr. Inspector Fraser Ritchie

Contra Costa District Attorney's Office

Det. Ryan Ruff

Pittsburg Police Department

Assignment: Interviewed Officers John Odell and Gregory Simpson

TEAM #5:

Sr. Insp. John Garcia

Contra Costa District Attorney's Office

Det. Jacob Stage

Pittsburg Police Department

Det. Garrett Garcia

Pittsburg Police Department

Assignment: Interviewed Officer Lee Borman and Sgt. Sankara Dumpa

TEAM #6:

Det. Fernando Salamanca

Pittsburg Police Department

Det. Ernesto Mejia

Pittsburg Police Department

Assignment: Death Notification

TEAM #7:

Detective Fernando Salamanca

Pittsburg Police Department

Assignment: Interviewed Gerald Davenport and AMR

TEAM #8:

Sr. Insp. John Garcia

Contra Costa District Attorney's Office

Det. Ernesto Mejia

Pittsburg Police Department

Assignment: Interviewed Officer Colton Harvey

TEAM #9:

Sr. Insp. John Garcia

Contra Costa District Attorney's Office

Assignment: Crime scene outline

TEAM #10:

Criminalist R. Marcelo

Contra Costa Crime Lab

Criminalist D. Peng

Contra Costa Crime Lab

Assignment: Processed crime scene and involved Officers

ADDITIONAL INVESTIGATIVE DUTIES CONDUCTED:

Sr. Inspector Tim Jung

Contra Costa District Attorney's Office

Assignment: Interviewed W-5

Dr. Ogan, Pathologist

Contra Costa Crime Lab

Brianna Ward, Pathology Assistant

Contra Costa Crime Lab

Criminalist J. Estrada-Ballardo

Contra Costa Crime Lab

Det. Ryan Ruff

Pittsburg Police Department

Sgt. Josh Reddoch

Pittsburg Police Department

Assignment: Documentation of Autopsy and investigation of WATKINS recovered firearm owned by W-4.

Officer Tamhra Towner

Pittsburg Police Department

Officer Nicoletti

Pittsburg Police Department

Assignment: Crime Scene Log

Evidence Technician Mychal Muro

Pittsburg Police Department

Assignment: Assisted CCCSO Crime Lab with Evidence Collection

Officer Nicoletti

Pittsburg Police Department

Assignment: Crime Scene Log and initial interview with W-1

EVIDENCE REVIEWED:

- The crime scene located at location #1, 2nd story balcony.
- Pittsburg Police Department Event Report, Event #P211400869
- Audio and bodycam recordings.
- Involved officer interviews.
- Witness interviews.
- Additional investigative duties conducted.

- Crime scene evidence collected.
- Coroner's Report
- Coroner's Inquest
- Patrick Watkins Criminal History
- 911 Call/Radio Traffic

TIMELINE:

On May 20, 2021, at Approx. 2121 hours, R/P W-1 called 911 and spoke with Antioch PD Dispatch. R/P reported her child's father was banging on her front door and he had a gun in his hands.

The following chronologic time lime was derived from PPD Event Log 21-11400869:

21:23:30 hrs: Officer Odell was dispatched to the call.
 21:23:52 hrs: Officer Cardona was dispatched to the call.
 21:24:00 hrs: Officer Borman was dispatched to the call.
 21:24:07 hrs: Sgt. Dumpa Cardona was dispatched to the call.
 21:24:23 hrs: Dispatch advised responding officers the subject was Patrick WATKINS 11/12/1989, BM, 31, 510, 200, Blk hoodie, grey sweatpants. Subj may have walked off, unknown direction of travel.
 21:25:59 hrs: Officer Simpson was also dispatched to the call.
 21:27:21 hrs: Officers Odell, Borman, Cardona arrived on scene
 21:27:23 hrs: Officer Simpson arrived on scene
 21:27:37 hrs: Sgt. Dumpa arrived and he and Officer Odell took a position on the north side
 21:27:42 hrs: Officers Borman and Cardona took a position on the south side
 21:28:55 hrs: Sgt. Dumpa advised shots fired
 21:28:58 hrs: Sgt. Dumpa advised to stage medical
 21:29:52 hrs: Sgt. Dumpa advised can't see the subject anymore but he still had the gun
 21:30:03 hrs: Sgt. Dumpa requests K9 and helicopter
 21:34:58 hrs: CCCSO WC offers CCCSO assistance
 21:35:16 hrs: Sgt. Dumpa advised to hold radio traffic, they were moving to the subject with shields
 21:37:25 hrs: Sgt. Dumpa advised subject still armed with a gun in his hand
 21:39:33 hrs: Sgt. Dumpa advised still trying to negotiate with the subject
 21:43:52 hrs: Sgt. Dumpa advised the subject still had movement, still had firearm
 21:59:38 hrs: Sgt. Dumpa advised drone was overhead with lights on, subject was not moving
 22:09:30 hrs: Sgt. Dumpa advised 40 deployed, still no movement, moving up
 22:11:12 hrs: Sgt. Dumpa advised CPR in progress
 22:11:19 hrs: Sgt. Dumpa advised fire was on scene
 22:11:45 hrs: Unknown unit advised taking the subject into custody
 22:12:29 hrs: Code 4 advised
 22:45:27 hrs: Lt. Galer invoked Protocol

SCENE DESCRIPTION:

Location of Scene:

Location #1 is a three-story apartment complex. This complex had several buildings and was gated. There were covered carports as well as individual garages located on the property. The garages were located on the ground level and the apartments were located on the second and third levels. The area of the shooting occurred on the east side of the complex near the stairwell leading to Location #1.



Stairwell leading to Location #1



Stairwell leading to Location #1

The scene of this incident was located on the second-floor landing of this three-story apartment complex. There was a flight of 17 stairs leading to the landing. This stairwell was the only access point to Location #1.

WATKINS' body (deceased) was located toward the rear of the landing between the apartments.

WATKINS was lying on his back, with his head next to the rear metal railing at the end of the landing. He was wearing black and red tennis shoes and grey sweatpants. He was not wearing a shirt and had EKG type pads attached to his chest area. WATKINS was handcuffed on his right wrist and had bloody clothing on the ground between his legs, believed to have been removed by medical personnel.

WATKINS had what appeared to be two gunshot wounds to his upper chest below his left nipple and on the right side of his chest.

There was a red and grey hat with a Red Bull emblem on the ground next to his right leg. There was a black backpack on the ground next to his left side. WATKINS was wearing a black and white Covid 19 style face covering.

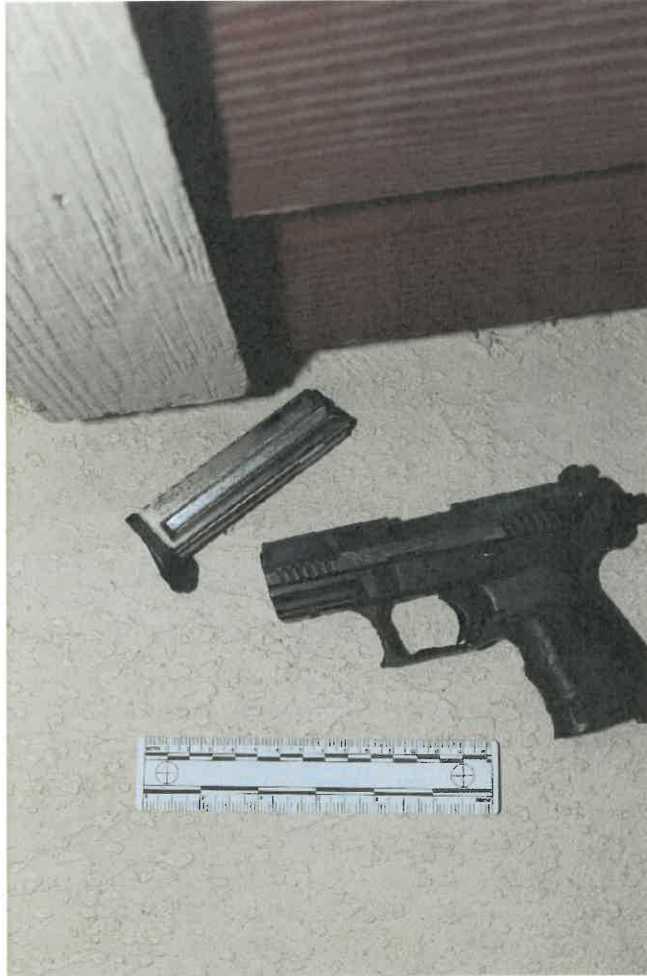
There were two unfired 40mm and one expended less than lethal cartridges to the right of his body. There was a green evidence marker # 11 next to those items.

There was what appeared to be a bullet hole on the third metal rail of the south railing and appeared to have perforated the railing in the north to south direction. There was an apparent impact mark located on the south of the railing on the exterior wall of the apartment. There were three fired expended 9mm casings located near the door of one of the apartments. These casings were later collected by crime lab personnel.

There was a blue steel Walther semi-automatic pistol on the ground on the landing near WATKINS' body. The magazine was lying next to the gun. The hammer of the weapon was in a cocked position. The magazine was empty. There was a green evidence marker # 9 next to the weapon. Just south of the handgun was a live .22 caliber round.

There was an expended 9mm casing located on the stairs, marked by evidence green marker # 5 and just above four tactical helmets on the flight of stairs. On the ground level there was one expended 9mm casing located on the walkway to the west of the stairway, marked by evidence marker # 2. There were two apparent bullet fragments located further south along the same walkway, marked by green evidence marker #3 and #4.

Also, on the ground level there was one unfired 9mm cartridge located in front of one of the apartment garages, marked by green evidence marker # 1.



Semi-automatic handgun possessed by WATKINS



40 mm Less than Lethal Rounds

Senior Inspector John Garcia met with members of the crime lab team who took several photos before and after the green evidence markers were placed. Inspector Garcia was present when the crime lab seized said evidence and conducted a 3D scan of the scene. The crime lab team consisted of Criminalists R. Marcelo-Li and D. Peng. Also present was PPD CSI Technician Michael Muro. CSI Tech Muro seized the backpack containing WATKINS' cell phone, keys, fanny pack, wallet and lighter.

Note: The crime lab examined and photographed the weapons used by the officers who were involved in this incident. Refer to photos and lab report.

Notable Measurements:

1. Width of the landing was approximately 7.7 feet.
2. Length of the landing was approximately 24 feet.
3. Length of the stairway was approximately 18.2 feet
4. The distance between the handgun and body of WATKINS was approximately 10.3 feet.
5. Distance between the live .22 caliber round and the handgun was approximately 3.4 feet.
6. The distance between the waistline of WATKINS to the live 22 caliber round was approximately 6.8 feet.
7. The distance between the mid torso of WATKINS to the handgun was approximately 10.3 feet.

Note: These measurements were obtained from the Leica 3D RTC360 scanner. The data was provided to Inspector Garcia by the crime lab.

At 0606 hrs., CCCSO Coroner Deputy Ron Westhorpe arrived to take custody of WATKINS. Inspector Garcia assisted in removing WATKINS and was present during the examination of his body prior to him being removed. WATKINS was later transported to the county morgue.

RELEVANT BODY WORN CAMERAGE FOOTAGE:

There was body-worn camera (BWC) footage that captured key portions of the incident. The most relevant footage depicted Officer Odell engaging WATKINS who was backing up the stairwell away from responding officers. As Officer Odell crested the top of the stairs, WATKINS continued to walk backwards, then turned clockwise to continue walking away from Officer Odell. Watkins then spun his body counterclockwise and with a handgun in his right hand, raises and points it in the direction of Officer Odell. Officer Odell fired an initial three (3) rounds from his handgun at WATKINS who fell to the ground. Officer Odell then backed up while shouting for WATKINS to drop the gun. Officer Odell then laid down in the prone position at the top stairs and two (2) more shots were heard. Officer Odell got up, shouting that he had incurred a double feed and retreats to a safe area at the bottom of the staircase where he ultimately clears his weapon malfunction.

The relevant portion of the body-worn camera (BWC) footage depicts the following information:

21:28:01-Officer Odell arrived on scene

21:28:05-WATKINS can be seen standing up from a seated position mid-way on the staircase

21:28:06-Officer Odell exited his patrol vehicle and begins walking towards WATKINS

21:28:14-WATKINS appeared to be talking with officers and begins backing up the staircase

21:28:19-Officer Odell appeared to have his service handgun in his right hand and pointing it towards the ground

21:28:20-WATKINS raised both of his hands to the area near his jacket pockets and appeared to be manipulating them

21:28:24-Officer Odell raised his handgun from the low ready position and pointed it in the direction of WATKINS

21:28:30-WATKINS continued to manipulate an area of his jacket near and around his pockets

21:28:38-WATKINS began to walk backwards up the staircase

21:28:40-Officer Odell began advancing towards WATKINS

21:28:44-Officer Odell was midway on the stairs, WATKINS was at the top of the stairs and audio started on the BWC

21:28:46-WATKINS began to make a clockwise turn with his body while continuing to walk away from Officer Odell

21:21:47-Watkins began to turn back, counterclockwise towards Officer Odell who was heard telling WATKINS to get on the ground. WATKINS can be seen raising a handgun with his right hand and raises it in the direction of Officer Odell

21:28:48-Officer Odell fired three (3) rounds at WATKINS

21:28:49-WATKINS was observed falling to the ground

21:28:51-Officer Odell began backing up while yelling for WATKINS to drop the gun

21:28:54-Two (2) additional gunshots are heard along with the words, "Drop the gun, I have a double feed, double feed, double feed, double feed, double feed." Officer Odell ran down the stairs. Another voice can be heard in the background yelling he still had the gun.

INTERVIEWS OF INVOLVED OFFICERS:

OFFICER JOHN ODELL

May 21, 2021, at 0425 hours: Officer Odell was interviewed at the Hampton Inn and Suites located at 1201 California Ave, Pittsburg. Contra Costa County District Attorney (CCDAO) Senior Inspector Fraser Ritchie along with Pittsburg Police Department (PPD) Detective Ryan Ruff conducted this interview. Also present in the room was Officer Odell's legal counsel, Nicole Pifari.

In summary, Officer Odell was approximately 1 mile away from Location #1 when the call was dispatched. Officer Odell said he arrived at the front of the complex and waited for another officer to arrive, prior to entering the property. Officer Odell said as he drove down the northern most driveway and upon arriving at the complex, he observed WATKINS sitting on the stairwell that leads to Location #1, and other apartments. Officer Odell stated he drove his vehicle past WATKINS's location, exited his patrol vehicle at which time WATKINS stood up. Officer Odell verbally contacted WATKINS as he was beginning to stand up. Officer Odell said he believed Sergeant Dumpa, or Officer (Simpson) was with him for cover. Officer Odell said he drew his weapon as he was advised WATKINS was armed with a handgun. Officer Odell yelled at WATKINS to stop as WATKINS began to back slowly back up the stairs. Officer Odell stated as he got near the top of the stairs, he immediately noticed WATKINS pointing a black handgun at him. Officer Odell stated he feared for his safety and the safety of the other officers that were coming up the stairs with him, so he discharged his weapon towards WATKINS. Officer Odell believed he discharged his weapon three to four times, before his weapon malfunctioned.

OFFICER GREGORY SIMPSON

May 21, 2021, at 0617 hours: Officer Simpson was interviewed at the Hampton Inn and Suites located at 1201 California Ave, Pittsburg. Contra Costa County District Attorney (CCDAO) Senior Inspector Fraser Ritchie along with Pittsburg Police Department (PPD) Detective Ryan Ruff conducted this interview. Also present in the room was Officer Odell's legal counsel, Nicole Pifari. The interview was audio recorded and later transferred to compact disc.

In summary, Officer Simpson was dispatched to a man with a gun call and arrived on scene along with other Officers. Officer Simpson said when he got out of his vehicle, Officer Odell was already contacting WATKINS who was standing on the stairway. Officer Simpson recalled one of the officers on scene was giving commands to WATKINS, however, WATKINS was not responding. Officer Simpson said he followed Officer Odell up the stairs to cover him as Officer Odell was engaged with WATKINS. Officer Simpson said he observed Officer Odell at the top of

the staircase, as he was about halfway to three-quarters up the staircase. Officer Simpson said he saw WATKINS with a black handgun in his right hand. Officer Simpson said he lost sight of WATKINS as he was behind Officer Odell, at which time he heard a volley of shots being fired. Officer Simpson said based on the echo, he believed the shots came from WATKINS. He then observed Officer Odell go down on the staircase. Officer Simpson believed Officer Odell had been shot. Officer Simpson said he ascended to the top of the stairs where he observed WATKINS at the end of the landing, pointing the gun in his direction, and WATKINS had his finger inside the trigger guard. Officer Simpson discharged his handgun in the direction of WATKINS two (2) times, at which time WATKINS went to the ground.

OFFICER COLTON HARVEY

On May 21, 2021, at approximately 0108 hours, CCCDAO Senior Inspector John Garcia and Officer Mejia conducted a brief interview with PPD Officer Colton Harvey at the scene of the incident. In summary, Officer Harvey was at PPD when the man with a gun call came out. He responded code 3 to the scene of the incident. When he arrived, shots had already been fired and WATKINS was already down. Officer Harvey went to the top of the stairs where he noticed WATKINS was laying down with a firearm in his right hand and finger still on the trigger.

Since responding personnel were unable to ascertain if WATKINS was completely incapacitated, a drone team from the Contra Costa Sheriff's Department responded. A drone was deployed and hovered over WATKINS in an attempt to illicit a response from him, but none was observed. A 40mm less lethal sponge round was deployed at WATKINS also in an attempt to illicit a response from him but none was observed. Eventually, police personnel walked up to WATKINS and pressed ballistic shields against him at which time Officer Harvey removed the firearm from WATKINS hand, rendered it safe, then placed it on the ground.

OFFICER MARCUS CARDONA

On May 21, 2021, at approximately 0124 hours, Detective Miguel Gutierrez and CCCDAO Senior Inspector Tim Jung interviewed Officer Marcus Cardona in a small office located at the Hampton Inn in Pittsburg. In summary, Officer Cardona responded to the incident and upon arriving, heard shots being fired but didn't witness any portion of the shooting.

OFFICER HECTOR FLORES

On May 21, 2021, at approximately 0345 hours, Detective Miguel Gutierrez and CCCDAO Senior Inspector Tim Jung interviewed Officer Hector Flores while in a small office located at the Hampton Inn in Pittsburg. Also present in the interview was Flores' attorney, Nicole Pifari. In summary, Flores said that he had responded to the incident of a man with a gun call and arrived on scene. As he did, he could see a subject matching the description of the reporting party that was standing on the staircase and was being spoken to by Officer Odell and Sgt. Dumpa. As he approached the subject (WATKINS) began backing up the staircase followed by Officer Odell.

Officers had already asked WATKINS to keep his hands in view and not to back up the stairs, but WATKINS ignored those commands. Officer Odell, with gun drawn, was the first to head up the staircase after WATKINS. Officer Flores followed Officer Odell. Officer Flores said he transitioned to a less lethal device (Taser).

As Officer Odell was at or near the top of the staircase WATKINS was already out of view. Officer Flores said he then heard multiple gun shots and people saying to just drop the gun. Officer Flores put his taser away and drew his handgun but still couldn't see what WATKINS was doing. All of them backed down the staircase away from WATKINS towards the bottom of the staircase. Commands were given to WATKINS, but he didn't respond.

After additional officers arrived, they deployed ballistic shields to attempt to contact WATKINS to see what he was doing as they had lost sight of him. Once that was done, Officer Flores could see that WATKINS still had the gun in his right hand and the gun was pointing towards the staircase. Additional steps were taken to address whether WATKINS was still alive or was lying in wait (Drone, less lethal 40 mm) but nothing worked. Eventually the police responded with shields and rendered the scene safe.

OFFICER LEE BORMAN

On May 21, 2021, at approximately 0145 hours, Senior Inspector John Garcia, along with PPD Detectives Jacob Stage and Garrett Garcia interviewed Officer Lee Borman while in Detective Stage's office located at the PPD. In summary, Officer Borman arrived on scene as shots were fired but didn't witness the shooting. After arriving on scene, he eventually deployed up the staircase along with other officers to assess WATKINS. As he did so, he saw WATKINS laying on his right side with his right arm tucked underneath him and a firearm in his right hand pointing towards the officers as they approached. Officer Borman said he could see WATKINS left arm raise and could also see WATKINS' chest rising and falling as if he was breathing. Commands for WATKINS to drop the firearm were given, but he didn't, so Officer Borman and the other officers retreated.

SERGEANT SANKARA DUMPA

On May 21, 2021, at approximately 0247 hours, Senior Inspector John Garcia, along with PPD Detectives Jacob Stage and Garrett Garcia responded to the Hampton Inn located in the City of Pittsburg to conduct an interview with Sgt. Sankara Dumpa who was the on-duty watch commander at the time of the incident. Sgt. Dumpa had indicated he, as the watch commander, responded to this incident. On his arrival, he saw WATKINS retreat back up the staircase and reach into the area of his front waistband, but he was never able to see WATKINS produce a handgun. Sgt. Dumpa then talked about his reasonings behind additional tactical decisions that were made.

INTERVIEWS OF CIVILIAN WITNESSES:

W-2

On May 21, 2021, at approximately 0111 hours, Sgt Kyle Baker from the Pittsburg Police Department and CCCDAO Senior Inspector Tim Jung responded to the apartment located next to the shooting scene to contact the reporting party, W-1 and her boyfriend, W-2. The officers knocked on the front door, were allowed inside, and spoke to W-2 about the incident.

W-2 said he's in a dating relationship with W-1. W-2 said on this date he arrived at the residence at approximately 1900 hours to check to see how the repairs he had done to the front door were holding up. W-2 said approximately one to two weeks prior to this incident, he had responded to the apartment to fix the front door to the apartment as it had been kicked in. When asked if he knew how the door became damaged in the first place W-2 indicated he didn't know.

W-2 said that this evening, he and W-1 were hanging out upstairs and then her youngest son came upstairs and told them someone was at the front door. W-2 said her oldest son was upstairs. W-2 said the next thing he knew W-1, (who had gone downstairs to see who was at the door) was on the phone calling the police.

W-2 said while he was upstairs, he could hear a bunch of banging on the door. After some time had elapsed, the banging stopped, and it became quiet. W-2 said at some point he heard a series of what he believed were gun shots coming from outside and then W-1 came upstairs to check to see if her kids were okay. W-2 said after he heard the shots, he could hear people outside saying, "release the weapon, don't die over this, we can't help you until you release the weapon."

W-2 said at one point prior to the shots being fired, he heard W-1 saying for him (WATKINS) to leave. W-2 added he only knew of WATKINS as the father of W-1's children. W-2 stated he never knew prior to the shots being fired if WATKINS had a gun with him or not. W-2 didn't have anything further pertinent information and the interview was concluded.

W-1

After Sgt Kyle Baker from the Pittsburg Police Department and CCCDAO Senior Inspector Tim Jung concluded their interview with W-2, they then spoke with W-1. This interview was conducted on May 21, 2021, at approximately 0121 hours.

In summary, W-1 said she had two children, one of which she had fathered with Patrick WATKINS. Both W-1 and her two children were the only people that live in the apartment on a full-time basis. W-1 said she met WATKINS back in 2015. WATKINS introduced himself to her and they began dating. Later that year, she became pregnant with a child by him (WATKINS).

W-1 described her relationship with him as good even after the birth of their child. They were never married. In 2019 W-1 and WATKINS moved to the apartment where she currently resides.

In 2020, W-1 said she found a methamphetamine pipe that belonged to WATKINS. When she confronted him about it, WATKINS claimed it was for smoking marijuana, but W-1 knew better. W-1 also could see a change in WATKINS as he was becoming "angrier." In 2020, W-1 said he had never been violent with her but was starting to break things in the apartment. W-1 also said WATKINS was terminated by his employer in September 2020. W-1 said during the period of 2015 to 2020 she knew WATKINS to possess and carry at least one green, or dark green, 9mm handgun.

W-1 said at one point in their relationship, WATKINS admitted he had a drug problem. He started staying in his car for long periods of time and was often gone a lot. W-1 said she knew WATKINS carried his gun in a paper bag. W-1 said about two months ago, WATKINS packed up all his belongings and moved out of the apartment. Through that time, there was still no violence towards her from WATKINS. W-1 said since then, WATKINS put his belongings in storage (unknown where) and was living in different hotels. W-1 said May 20 was the first time she'd seen him in two weeks. She said yesterday she picked him up at the AutoZone in Antioch and dropped him off at the American Best Value hotel in Antioch. W-1 said WATKINS had a car, but it was repossessed a few days ago so he didn't currently have a car.

W-1 confirmed about two weeks ago, WATKINS kicked her front door in while she wasn't home. She knew this to be true as it was caught on her home surveillance camera system via a camera set up in her kitchen that points towards the front door. She said it was a NEST system and that she would get a copy of the video to Sgt. Baker at a later date. W-1 said WATKINS showed up unannounced and she later found he went there to retrieve a set of gold teeth he'd left there.

W-1 said WATKINS was acting fine the day before and she had no idea if he had the gun then. W-1 said after she had dropped WATKINS off the previous night, she received a phone call from him that evening. During that conversation, WATKINS asked her who she was dating now because he knew she was dating someone else. W-1 said she told him it wasn't his business and they eventually hung up. She reiterated they really didn't argue about her seeing someone else.

W-1 said earlier in the day (5/21/2021) she received a text from WATKINS telling her to have a good day, but she didn't respond back. She said she got home between 5-6 PM and W-2 came over sometime after that. W-1 said around 9 PM, she and W-2 along with her oldest son were upstairs and her youngest son was downstairs. She said around that time, WATKINS called her cell phone, but she didn't answer. About 30 minutes later, her son came upstairs and said someone was knocking on the door. W-1 said she went downstairs, looked out the peephole of the front door, and saw WATKINS. W-1 said WATKINS was holding the gun she had previously described.

W-1 said WATKINS was holding the gun in his right hand and was wearing a black hooded sweatshirt and gray sweatpants. W-1 said WATKINS was holding the gun down at his side. W-1 said she told him through the door that he needed to leave, and WATKINS replied he needed to use the restroom. W-1 said WATKINS was calm at the door, however, she still called the police. After that, W-1 said WATKINS started banging on the door and she was worried he would come into the apartment, see someone new in there with her, and "take action" meaning do something bad to her or her new boyfriend. W-1 said she was worried WATKINS could shoot both W-2 and her.

W-1 said while on the phone with dispatch, she told the dispatcher someone was banging at her door, and they had a gun. When asked if she knew who it was, she told the dispatcher yes. W-1 gave dispatch a description of WATKINS and the apartment number. W-1 said no one else came downstairs. W-1 said she believed WATKINS knew she was calling the police because she was on the phone just inside of the door. W-1 stayed on the phone as the police were being dispatched.

W-1 was fearful that WATKINS was trying to kick in her door to get to her and she was especially fearful since he had a gun. W-1 said she felt the police arrived "pretty quick" and the only reason she knew they had arrived was due to her hearing gunshots. W-1 said she never heard any verbal words being exchanged between the police or WATKINS. W-1 believed she heard approximately four (4) gunshots, and she was upstairs when she heard the shots. W-1 said she was still on the phone with dispatch when the gun shots were fired. From there she went and hid in the closet and could hear shouting to put the gun down.

W-1 said there were no exterior cameras and that the interior camera in the kitchen continually records. Sgt. Baker confirmed he would obtain a copy of the footage at a later date. Sgt Baker later confirmed that no video was ever located. Sgt. Baker obtained next of kin info for WATKINS from W-1. The interview was then concluded.

Additionally, it was learned that PPD Officer Nicoletti had originally contacted W-1 shortly after the incident and had taken an initial statement from her. Her statements to Officer Nicoletti were consistent with the statements she gave Sgt. Baker Sgt Kyle and CCCDAO Senior Inspector Tim Jung.

W-3

On May 21, 2021, at approximately 0158 hours, PPD Officer Ernesto Mejia and CCCDAO Senior Inspector Tim Jung spoke to W-3, who lived directly next door to W-1.

Officer Mejia conducted the interview. In summary, W-3 said she lived in an apartment next to Location #1 with her two daughters. On May 21, 2021, she arrived at her apartment after having run some errands. Once she crested the top of the stairs, she could see the suspect

(WATKINS) who was banging on the door to Location #1. W-3 said she'd previously seen this subject come and go from the apartment. W-3 said she went into her own apartment and a few minutes later, someone began knocking on her front door. She went out onto her balcony and asked WATKINS what he wanted. He ignored her so she went back inside her apartment. Approximately three minutes later, she heard approximately five (5) gunshots. She then called 911.

W-3 didn't witness the interactions with the police.

INTERVIEWS OF MEDICAL EMERGENCY PERSONNEL:

Ryan Fern, Captain	ConFire
Tom Goss, Paramedic Engineer	ConFire

On May 26, 2021, at approximately 1405 hours, PPD Detective Fernando Salamaca responded to the Consolidated Fire Station #85 located at 2320 Loveridge Rd, Pittsburg to speak with Fire Captain Ryan Fern and Paramedic Engineer Tom Goss who had responded to the incident on May 21.

In summary, Captain Fern indicated he and his crew had responded to the incident and upon arrival, assessed WATKINS. Captain Fern noted a bullet entry wound located on WATKINS left side and an exit wound on the right side of his torso. With WATKIN's lacking a pulse, they called him deceased at 2214 hours. Neither Captain Fern nor Paramedic Goss had any additional pertinent information.

ADDITIONAL INVESTIGATION

On May 24, 2021, Detective Ruff conducted an Automated Firearm System (AFS) check on the Walther P22 semi-automatic handgun (serial #L424280) that was recovered from WATKINS. Per AFS, the handgun was purchased from Bulls Eye Sports on 7/19/2012 by W-4. Detective Ruff subsequently contacted W-4 and learned that W-4 had reported the handgun as stolen from his vehicle in August 2014 to the Vacaville PD. Detective Ruff subsequently obtained a copy of this report (Vacaville PD case 2014-5133).

On May 21, 2021, at approximately 2217 hours, PPD Officers Nicoletti and Towner started a crime scene log.

RE-INTERVIEW WITH W-1 AND INTERVIEW WITH W-5 RE NEXT OF KIN DEATH NOTIFICATION

On May 25, 2021, CCCDAO Senior Inspector Tim Jung contacted W-1 via cell phone to further inquire about a next of kin for WATKINS. W-1 said that WATKINS had a brother, W-6, and he also had a cousin, W-5. W-1 said she had already spoken with W-5 and that W-5 had already notified W-6 of his brother's death.

CRIME SCENE EVIDENCE RECOVERED:

The Contra Costa County Sheriff's Office Division of Forensic Services responded to the scene and performed the following duties:

- Scene Documentation with notes
- Photographs
- Laser scan
- Evidence collection

Evidence Collected:

- Officer Simpson's duty pistol, magazine, and associated ammunition
- Officer Odell's duty pistol, magazine, and associated ammunition
- 40MM launcher
- Walther pistol, model P22, 22LR caliber, serial number L424280, and magazine
- .22 unfired cartridge (cone 10)
- (2) unfired less lethal 40MM cartridges and (1) fired 40MM less-than lethal cartridge case
- Apparent bullet fragments (cones 3 and 4) from first floor
- (1) unfired cartridge (cone 1) and (5) fired cartridge cases (cones 2, 5 thru 8)
- GSR kit collected from P. Watkins 10 RML-15 Suspect P. Watkin's clothing

The CCC Crime Labs reports concerning this investigation are documented under case number 2021-2918 and under the following lab reports:

21-1700-1 Report of Field Services, attachment-27

21-1700-2 Ballistic Imaging, attachment-28

21-1700-3 Function Testing, attachment -29

21-1700-4 Autopsy, attachment-30

AUTOPSY

Doctor Ikechi Ogan, Forensic Pathologist, performed an autopsy on May 24th, 2021, at the Contra Costa County Coroner's Office. In Summary, the autopsy⁴ results are summarized below:

Cause of Death: Multiple gunshot wounds (2) **Other Significant Conditions:** Polypharmacy

⁴ For further details regarding the Autopsy, the original records are retained by the Contra Costa County Sheriff Office, Office of the Sheriff-Coroner.

Gunshot Wound #1 was described as follows:

There is a gunshot wound on the left calf muscle. This entrance gunshot wound is located 13 inches above the sole in the mid-posterior calf. The wound itself measures 1-inch in diameter and is surrounded by an eccentric abrasion collar on the lower half (3 to 9 o'clock positions). There is no evidence of close-range firing (gunpowder soot or stippling) on the skin around this entrance wound. A medium to large caliber deformed and jacketed projectile is recovered from the soft tissues of the left lower thigh and given to the attending criminalist.

Gunshot Wound #2 was described as follows:

There is a gunshot wound on the left side of the chest. This entrance gunshot wound is located 18 inches below the top of the head and 2 inches to the left of the anterior midline. The wound is also present 2 inches below the left nipple. The wound measures 0.5-inch in diameter and is surrounded by an eccentric abrasion collar on the lower half of the wound (4 to 7pm). There is no evidence of close-range firing (gunpowder soot or stippling) on the skin around this entrance wound. The projectile enters the chest by fracturing the left fifth rib and perforating the soft tissues of the intercostal space. The projectile then perforates the pericardium and right ventricle of the heart, prior to perforating the right hemidiaphragm.

The projectile then cuts a groove across the surface of the liver causing extensive lacerations and pulverization of the liver. The projectile exits the abdomen by puncturing the soft tissues of the seventh right intercostal space. There is infiltrating hemorrhage and tissue destruction along this wound path and the injuries are as noted. The direction of injury is front to back and left to right when the body is viewed in the usual position. There is no projectile recovered from this wound path.

The toxicology report was positive for the presence of Amphetamine, Methamphetamine, and Delta 9 THC.

LEGAL PRINCIPLES

The California District Attorneys Association Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder

has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

The applicable California Penal Code Sections and Jury Instructions [CALCRIM] are as follows:

Pursuant to CALCRIM 220: [Reasonable Doubt Jury Instruction]

The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be biased against the defendant just because he has been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. []

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, he is entitled to an acquittal, and you must find him not guilty.

Section 187: Murder is the unlawful killing of a human being or fetus with malice aforethought.

Section 188: Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

Section 192: Manslaughter is the unlawful killing of a human being without malice.

Section 196: Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

Section 835a: (a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a

peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

Section 197: Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends or endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or
4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Section 199: The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Any killing of a human being at the hands of another is a homicide. A homicide may be criminal or justifiable depending upon the circumstances. It is justifiable if done while resisting a violent felony or in self-defense or in defense of another if it reasonably appears

to the person claiming the right of self-defense or the defense of another that he or she actually and reasonably believed that he or she or another was in imminent danger of great bodily injury or death. (See *People v. Williams* (1977) 75 Cal. App. 3rd 731.) In protecting oneself or another, a person may use all force which he or she believes reasonably necessary, and which would appear to a reasonable person, in similar circumstances, to be necessary to prevent the injury, which appears imminent. (See California Criminal Jury Instruction CALCRIM 505) In order to justify killing another person in self-defense or in the defense of another, actual danger of death or great bodily injury is not necessary. (CALCRIM 505.)

Pursuant to CALCRIM 507:

A homicide by a peace officer is justifiable and not unlawful when:

1. The defendant was a peace officer

AND

2. The killing was committed while the defendant

either:

A. Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the defendant or another person;

OR

B. Reasonably believed, based on the totality of the circumstances, that:

(1) A person was fleeing a felony;

(2) That force was necessary to arrest or detain that person;

(3) The commissioned felony threatened or resulted in death or serious bodily injury,

AND

(4) The person will cause death or serious bodily injury to another unless immediately apprehended.

Pursuant to CALCRIM 505. Justifiable Homicide: Self-Defense

The defendant is not guilty of murder or manslaughter if he was justified in killing someone in self-defense. The defendant acted in lawful (self-defense/ [or] defense of another) if:

1. The defendant reasonably believed that he was in imminent danger of being killed or suffering great bodily injury;
2. The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger;

AND

3. The defendant used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of death or great bodily injury to himself. Defendant's belief must have been reasonable, and he must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the killing was not justified.

When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

The defendant's belief that he was threatened may be reasonable even if he relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true.

A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death or great bodily injury has passed. This is so even if safety could have been achieved by retreating.

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, you must find the defendant not guilty of murder or manslaughter.

Additional Case Law and CALCRIM Instructions:

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. The Supreme Court stated, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 US 386, 396-397.

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal. Moreover, if an act is committed by reason of a mistake of fact which disproves any criminal intent, it is not a crime. Therefore, a person is not guilty of a crime if he or she commits an act under an actual belief in the existence of certain facts and circumstances which, if true, would make the act lawful. (See CALCRIM 3406.)

LEGAL ANALYSIS

Introduction:

The legal issue to be decided by the CCCDAO is whether any involved law enforcement officers or civilians violated any criminal laws. The Contra Costa District Attorney's Office analyzes each fatal incident on the case specific facts and circumstances. The community, including the deceased, his family, and the involved officers deserve an independent factual and legal analysis. Whether someone is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

The California District Attorneys Association Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

An officer is not criminally liable for the death of another person if he, “reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury [CALCRIM 507]. The People have the burden to prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense, and absent direct evidence that an officer did not actually or reasonably believe in the need for self-defense, circumstantial evidence must be used.

In the present case, a review of all of the evidence shows that Officer John Odell and Officer Gregory Simpson actually and reasonably believed in the need to use deadly force in defense of themselves and others.

Pittsburg Police Officer John Odell

Officer John Odell’s use of force in the current case was both lawful and reasonable under the circumstances. Officer Odell responded to location #1 after the reporting party, W-1, called 911 and reported that her child’s father, Patrick Watkins, was at her front door, armed with a gun in his hands, and was not leaving.

An officer responding to a call under these circumstances could reasonably conclude they were responding to a potentially dangerous domestic violence incident. In addition, an officer may reasonably conclude that the suspect, who was reportedly armed with a gun in his hand, may act out violently when contacted by police.

Once Officer Odell arrived at the scene, he saw Watkins, who matched the description of the suspect, at the stairwell of the residence. Officer Odell contacted Watkins, and although he could see that Watkins did not appear to have a firearm in his hands at that moment, Watkins reached for his waistband on multiple occasions. Under these circumstances, Watkins’ furtive gestures increased the likelihood that Watkins may grab his reported weapon and fire it at officers.

Watkins then walked away from the officers and proceeded up the stairs despite being told multiple times by the police to “stop” and not to go up the stairs. Once on the 2nd story landing Watkins then refused to follow Officer Odell’s commands for him to get on the ground. An officer under these circumstances could reasonably conclude that an armed suspect, who was potentially reaching for a firearm moments earlier, and who refused to obey commands, posed an even greater risk of deadly violence.

Instead of complying with officer Odell’s commands, Watkins turned his body counterclockwise towards Officer Odell as Watkins was standing near the front door of a residence. A review of Officer Odell’s body worn camera reveals that Watkins, at this point, was holding a gun in his right hand. Watkins’ right arm was parallel to his body and the firearm was pointed towards the floor. [See image below]



Full Screen Shot Image



Close-Up Image of Watkins' Holding the Firearm in his Right Hand.

After grabbing his firearm from an unknown location, Watkins then began to point his firearm upwards and at Officer Odell. In response, Officer Odell fired three rounds at Watkins.



Full Size Screen Shot of Watkins Pointing his Firearm at Officer Odell.



Close-Up Image of Watkins Pointing his Firearm at Officer Odell

Under these circumstances, Officer Odell actually and reasonably believed he was in imminent danger of death or serious bodily injury. Officer Odell was responding to a potential domestic violence incident where the suspect was armed, banging on the door, and refusing to leave. When contacted by police, Watkins repeatedly reached for his waistband, further heightening the danger to the officers at the scene. Watkins then disobeyed officers' commands by walking up the stairs while armed. When followed by officers, instead of getting on the ground as ordered, Watkins pulled out his firearm from an unknown location and pointed his firearm at Officer Odell, who in turn, fired three shots at Watkins.

Under these circumstances, Officer Odell actually and reasonably believed he was in imminent danger of serious bodily injury or death. As such, his use of deadly force was justified.

Pittsburg Police Officer Gregory Simpson:

Officer Gregory Simpson's use of force was both lawful and reasonable under the circumstances. Officer Simpson responded to the same call of a potential domestic violence incident where the suspect was banging on the front door of his ex-girlfriend's residence while armed with a firearm. A reasonable officer could conclude, based on the nature of this call, that he was responding to a serious and potentially life-threatening situation.

Officer Simpson arrived at the scene and observed Watkins disobey officers' commands to "stop," and saw him disobey commands not proceed up the stairwell. An officer under these circumstances could reasonably believe that the suspect's refusal to follow orders heightened the risk of danger to those involved.

Officer Simpson then proceeded behind Officer Odell as they followed Watkins up the stairwell and saw Watkins on the 2nd floor landing with a gun in his right hand, near his right thigh. Officer Simpson momentarily lost sight on Watkins - but heard gunfire and saw Officer Odell go into a prone position on the stairwell. Based on this information, Officer Simpson incorrectly but reasonable believed that Officer Odell was shot and went down due to being injured from gunfire by the suspect.

Officer Simpson proceeded further up the stairs to aid Officer Odell and saw Watkins now point his firearm at him. Under these circumstances, Officer Simpson reasonably believed that both he, and his fellow officers, were in imminent danger of serious bodily injury or death. As such, his use of deadly force was justified.

CONCLUSION:

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, Pittsburg Police Officers Odell and Simpson were justified in their use of lethal force. The officers acted with an actual and reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury. As such, no further action will be taken in this case.